

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO
et al.,

(Jointly Administered)

Debtors.¹

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ORDER REGARDING ARGUMENTS AND SUPPLEMENTAL BRIEFING IN
CONNECTION WITH MOTION OF THE COMMONWEALTH OF PUERTO RICO
PURSUANT TO BANKRUPTCY CODE SECTION 365 FOR ENTRY OF ORDER APPROVING
ASSUMPTION OF SETTLEMENT AGREEMENTS WITH GARCÍA RUBIERA CLASS PLAINTIFFS

The Court has received and reviewed the *Motion of the Commonwealth of Puerto Rico Pursuant to Bankruptcy Code Section 365 for Entry of Order Approving Assumption of Settlement Agreements with García Rubiera Class Plaintiffs* (Docket Entry No. 15171, the “Motion”) and all associated filings by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) and the Official Committee of Unsecured Creditors (the “Committee”). The Oversight Board’s reply in support of the Motion (Docket Entry No. 15325, the “Reply”) cites an out-of-circuit case, In re Worldcom, Inc., 343 B.R. 486 (Bankr. S.D.N.Y. 2006), to argue that the Court should adopt a “functional” approach that does not require the Court to consider whether material unperformed obligations remain outstanding on both sides of a contract. (See Reply ¶ 18 n.6; see also Reply ¶ 8 n.4 (citing In re Riodizio, Inc., 204 B.R. 417

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

(Bankr. S.D.N.Y. 1997)).) That approach differs from the traditional “Countryman” standard for determining whether a contract is executory within the meaning of section 365(a) of the Bankruptcy Code.

The Oversight Board and the Committee are directed to address at oral argument in connection with the Motion whether binding authority requires the Court to apply the Countryman standard and, if not, whether another standard would be more appropriate.

The Oversight Board and the Committee are directed to meet and confer and to file a joint report by December 16, 2020, setting forth their respective positions concerning whether the Court should apply the Countryman standard, or another standard for which there is precedent, in resolving the Motion.

SO ORDERED.

Dated: December 8, 2020

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge